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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92051679
Party	Defendant Empire Grape Company, LLC
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Submission	Other Motions/Papers
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Date	12/09/2009
Attachments	USPTO response.pdf ( 6 pages )(193502 bytes )

1 Empire Grape Company, LLC  
2 2540 West Paul Avenue  
3 Fresno, CA 93711

4  
5 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

6 BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

7 oOo

8 DEMETRIO PAPAGNI )  
9 Petitioner, ) Cancellation No.: 92051679  
10 v. ) Registration No.: 3679176  
11 EMPIRE GRAPE COMPANY, LLC, ) Response to Petition for Cancellation Regarding  
12 ) Fu Jin Trademark Number 3,679,176  
13 Registrant. )  
14 )

15 oOo

16 BACKGROUND

17 FU JIN has been a wine, released in 1976 to the market, produced by  
18 California House Wine Company, and then by Papagni Vineyards. California  
19 House Wine Company registered the Trademark FU JIN (No 1,084,204 effective  
20 January 31, 1978), and thereafter assigned FU JIN to Papagni Vineyards as a  
21 result of a merger of the two companies in the early 1980's. FU JIN was last  
22 renewed by Papagni Vineyards in 1997.

23 Papagni Vineyards is now a suspended California Corporation whose  
24 primary shareholder is Angelo Papagni, my grandfather. Other smaller  
25 shareholders of this corporation are various members of my mother's family.  
26 Other than intellectual property, this corporation is, for all intents and  
27 purposes, valueless. For quite some time, the interests of Papagni Vineyards  
28 have been handled by other entities that have been in some way connected to  
29 Papagni Vineyards (ie: another company owned by my grandfather, or another  
family member) to keep various items of interest and value to the family  
intact.

1 For the last several years, with the consent of my grandfather, I have  
2 been working on the FU JIN project in a way to structure the label and wine  
3 for re-release to the Asian market. At the time when deals had to be signed,  
4 the only item left for consideration was the trademark status of FU JIN. At  
5 the beginning of February 2009, I discovered that the FU JIN trademark had  
6 not been renewed since 1997. The original trademark FU JIN expired in  
7 November 2008. Fearing that this needed business opportunity would fall out  
8 of family control (as I have been working on this project with the consent  
9 of, and on behalf of my grandparents), I reapplied for trademark status. It  
10 was my understanding that Demetrio Papagni, my uncle, was handling  
11 intellectual property issues on behalf of Papagni Vineyards - as his company,  
12 D.P. Enterprises, LP, utilizes other old family brands for use in the grape  
13 juice and fresh grape market. Apparently, he did not renew the trademark. I  
14 only applied for it after making several unsuccessful attempts to contact him  
15 regarding this issue - I assumed that we could figure out the permanent  
16 ownership once FU JIN was re-secured and the deal was generating some income  
17 for my grandparents. I had my company, Empire Grape Company, LLC, apply for  
18 trademark status instead of applying in the name of my grandparents, as I  
19 feared that recorded judgments against them would strip away any income  
20 generated by my two and a half years of work. Because I was in the middle of  
21 a deal, my quick application for trademark status was imperative to secure  
22 the ownership of the intellectual property that had been allowed to expire in  
23 2008. For expediency, I merely re-applied for trademark status using the  
24 original application filed by California House Wine Company in the 1970's.

25 Now comes my uncle, Demetrio Papagni (Petitioner), alleging that I  
26 stole from him the FU JIN trademark. He also alleges that I have stolen the  
27 FU JIN trademark from my grandparents, and to date has refused to talk with  
28 me about this issue. His allegations are completely false and inconsistent  
29 with the realities of trademark law. I have sent intermediaries to my uncle

1 to discuss this issue, with no result. He has taken great exception to my  
2 actions, without ever explaining to me, or anyone else in the family, why he  
3 did not renew the original trademark in the first place, or why he is  
4 scorning me for saving it. Instead of working with me (which has been my plan  
5 all along), his actions have unfortunately irrevocably ruined the strong  
6 relationship I have always had with my grandparents. I have been barred from  
7 seeing them. I find it abhorrent that, in my ongoing attempt to save  
8 something for my grandparents' benefit in the twilight of their lives, that  
9 my uncle would deny his parents the fruits of my labor all because he seems  
10 to feel slighted by my action in the aftermath of his inaction.

11 This Petition for Cancellation is more appropriately an internal family  
12 dispute. If my uncle is so convinced that I am causing him or the public  
13 harm, or that it is jeopardizing his own, later, trademark application, he  
14 should have filed a grievance during the public comment period when my  
15 application was published in the Official Gazette in June 2009. I would be  
16 very happy to assign the FU JIN trademark to a spendthrift trust set up for  
17 the benefit of my grandparents as I am still concerned that anything put into  
18 their name would be a mistake. Demetrio Papagni, to the best of our  
19 knowledge, has never had any intention to either use FU JIN for his own use,  
20 or on behalf of the Papagni family. I saved the specimens utilized in the  
21 Empire Grape Application when Demetrio Papagni was planning to dispose of  
22 them in the early 2000's. I believed they were necessary for the sale and  
23 distribution of a wine that has so much value to my family. I have not  
24 retained an attorney in this matter because of my limited resources, and as I  
25 have spent too much of my own time and money on this project, just to have it  
26 sabotaged.

27 **RESPONSE TO THE GROUNDS FOR CANCELLATION AS FILED BY KIMBLE, MACMICHAEL &**

28 **UPTON ON OCTOBER 30, 2009, IN NUMERICAL ORDER:**

1. The Petitioner, Demetrio Papagni, an individual, is not a producer, grower, packer, and shipper of grapes, grape juice and wine. However, D.P. Enterprises, located at 9505 Rd. 30 ½, Madera, California, 93636, is engaged in the growing, packing, and shipping of grapes, grape juice, and bulk wine.
2. This Petition is incorrect in that Registrant Empire Grape Company, LLC is not a California Limited Liability Corporation, as there is no such legal entity in California.
3. This information is correct in that Registrant filed an application for registration of the mark, FU JIN on February 10, 2009.
4. To the best of my information and belief, FU JIN has never specifically been out of commerce, as there exists on file (since the 1970's) with the Department of the Treasury's Tax and Trade Bureau (TTB) a live Certificate of Label Approval (COLA) for FU JIN.
5. Based upon the reasoning in my response to allegation #4, I have never knowingly made false, or misleading, material representations to the USPTO regarding the dates and use of FU JIN.
6. This information is correct in that Registrant filed the '862 application with the USPTO as a TEAS Plus Trademark Application.
7. Again, based upon my response to allegation #4, and my understanding and belief that I was working on this project on behalf of the original trademark owner, Angelo Papagni, I did not knowingly file a materially false or inaccurate statement with the USPTO in connection with the FU JIN application.
8. The substitute specimens in question were an actual promotional bucket for FU JIN, and a bottle of FU JIN branded wine. After taking the picture that constitutes the specimen, I drank the wine - I am pleased to report it tasted great.
9. Again, based upon my response to allegation #4, and my understanding and belief that I was working on this project on behalf of the original trademark owner, Angelo Papagni, I did not knowingly file a materially fraudulent application with the USPTO in connection with the FU JIN mark.
10. I have no information or belief that the Petitioner filed an application to register the mark FU JIN on March 20, 2009. If the Petitioner did file, it was not timely.
11. This allegation is false. Continued registration of FU JIN will in no way, shape, or form result in damage to the Petitioner and the public. In fact, continued registration of FU JIN will ensure that the

1 public will have access to the high quality FU JIN wine, which is sought after by the wine-buying  
2 public. As for the Petitioner, it is difficult to think that a mark that is used to earn money for the  
3 Petitioner's parents could in any way harm the Petitioner.  
4

5 **WHEREFORE,** Given the lack of real research by the Petitioner on the  
6 realities of the situation regarding the FU JIN trademark, I ask that this  
7 Petition for Cancellation be denied. The Petitioner, through his attorneys,  
8 seems to be arguing dubious semantics about non-existent issues as a cover  
9 for his failing to renew my grandfather's trademark on time in the first  
10 place. Given Demetrio Papagni's dereliction in protecting the intellectual  
11 property of my family, not maintaining the ability to use them, and along  
12 with the fact that he has never had an intention to use the mark, does not  
13 give him standing to petition for cancellation of the FU JIN trademark.  
14 Demetrio Papagni has personally known about my work with FU JIN since my  
15 project began over 2½ years ago as I have updated him, along with my  
16 grandfather, at every step. Any attempt on his part to deny anything I have  
17 written in this response would be a lie, and an affront to not only my  
18 family, but unfortunately in this particular case, the United States  
19 Government. I ask that no further tax money be wasted on this matter, and  
20 that a swift resolution be reached by allowing this registration to stand.  
21

22 Respectfully submitted,  
23

24  
25 DATED: December 8, 2009

A handwritten signature in black ink, appearing to read "Peterangelo Vallis", is written over a horizontal line.

Peterangelo Vallis  
Empire Grape Company, LLC

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2  
3 PROOF OF SERVICE BY MAIL (1013a, 2015.5 C.C.P.)  
4 STATE OF CALIFORNIA, COUNTY OF FRESNO

5 I am a resident or employed in the Fresno County; I am over the age of eighteen  
6 (18) years and not a party to this action; and my business address is:  
7 1625 Simpson Avenue, Kingsburg, California, 93631.

8 On December 9, 2009 I served the "Response to Petition for Cancellation  
9 Regarding Fu Jin Trademark Number 3,679,176" dated December 8, 2009, to the  
10 interested party in this action, by placing a true copy in a sealed envelope with postage  
11 thereon fully prepaid, in the United States mail at Fresno, California, addressed as  
12 follows:

13 Mark D. Miller, Esq.  
14 Kimble, MacMichael & Upton  
15 5260 N. Palm Avenue, Suite 221  
Fresno, California 93704

16  
17 I declare under penalty of perjury according to the laws of the State of California,  
18 that the foregoing is true and correct.

19 Executed on December 9, 2009 at Kingsburg, California.  
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22  
23 Declarant:

24   
25 \_\_\_\_\_  
26 Lindsay Weidner  
27  
28  
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